



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,222	12/08/2003	Tong Zhu	08971.0008	2511
22852	7590	10/16/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER YALEW, FIKREMARIAM A	
			ART UNIT 2436	PAPER NUMBER
			MAIL DATE 10/16/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/730,222

**Applicant(s)**

ZHU, TONG

**Examiner**

Fikremariam Yalew

**Art Unit**

2436

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10, 12-22, 25-35, 38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-22, 25-35, 38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The office action is in replay to an amendment filed on 06/27/2008. Claims 10-11, 23-24, 36-37 were previously canceled. Claims 27-35 have been amended. Claims 1-9, 12-22, 25-35, 38-39 are pending.
2. The examiner withdraws the specification objections.

### ***Response to Arguments***

3. Applicant's arguments filed on 06/27/2008 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, It would modify in order to provide a mechanism for quickly repairing a failure in a communications links in tunnels established for a realtime data transfer (See Swallow col 2 lines 14-17).

In response to applicant's argument that the combination of Swallow and Jarosz do not suggest or teach "a network connecting a first gateway and a second gateway, the first gateway comprising a first node and a third node, the second gateway comprising a second node and a fourth node". In response to applicant's arguments, the

recitation a network connecting a first gateway and a second gateway, the first gateway comprising a first node and a third node, the second gateway comprising a second node and a fourth node has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

In response to applicant's argument that the combination of Swallow and Jarosz do not suggest or teach "transmitting over the network an indication from the first node to the second node that the third node has failed". The examiner disagree and points out that Swallow teach "transmitting over the network an indication from the first node to the second node that a node has failed (See Swallow col 2 lines 14-27(i.e., detection of link failure, each communication link is stored in a node prior to any communication failure)).The primary reference(Swallow) does not explicitly teach "the third node has failed" that's why the examiner used the second reference(Jarosz) to cure the deficiency of Swallow reference such as "the third node has failed". The combination of Swallow and Jarosz teach "the third node has failed(See Jarosz col 1 lines 32-40 and col 3 lines 52-58,claim 1(i.e., detecting subsequent failure of the selected third node)).The applicant also argued that the combination of Swallow and Jarosz do not teach or suggest "reconfiguring a first data, the first data initially configured to be transmitted

over the network between the second node and the third node to be transmitted over the network between the fourth node and the first node after the indication has been received by the second node". The examiner disagree and points out that the combination of Swallow and Jarosz teach reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node to be transmitted over the network between the fourth node and the first node after the indication has been received by the second node (See Swallow col 3 lines 29-40,col 7 line 63 through col 8 line 3 and col 8 lines 31-52(i.e., intermediate node A redirects data packets for the primary tunnel through the by pass tunnel to intermediate node C))

Regarding to 35USC 101 arguments the examiner maintains the rejection. See the detail 35 USC 101 rejection below.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claim 27 is directed to signal embodied in a computer-readable storage device.

The examiner respectfully asserts that the claimed subject matter does not fall within the statutory classes listed in 35 USC 101. Claims 27 is directed a computer readable storage device/carrier wave that includes data signals (See 0040(i.e., storage devices like hard disks, floppy disks, or CD ROM, or other forms of RAM or ROM, or a carrier

**wave**). A signal does not fall within one of the statutory classes of 101. Claims 28-35, 38-39 depend on claim 27 and are rejected under to the same rationale.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-9, 12-22, 25-35 and 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swallow (US Patent No 6,751,190 B1) in view of Jarosz (US Patent No 7000121 B2).

8. As per claims 1, 14, 27: Swallow teaches a method/system/computer-readable storage device for redirecting data in network, the network connecting a first gateway and a second gateway, the first gateway comprising a first node and third node, the second gateway comprising a second node and a fourth node (See col 3 lines 9-48 (i.e., intermediate nodes 104, 106, 108, 120 and endpoints 102, 110)), the method comprising:  
transmitting over the network an indication from the first node to the second node that a node has failed (See col 2 lines 14-25)

reconfiguring a first data, the first data initially configured to be transmitted over the network between the second node and the third node, to be transmitted over the network between the fourth node and the first node after the indication has been

received by the second node(See col 3 lines 29-40, col 7 line through col 8 line 3 and col 8 lines 31-52).

Swallow does not explicitly teach transmitting over a network an indication from a first node to a second node that **a third node has failed**.

However Jarosz teaches transmitting over a network an indication from a first node to a second node that **a third node has failed** (See col 1 lines 32-40, col 3 lines 52-58 and claim 1).

Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the method disclosed by Swallow to include an indication that a third node has failed. This modification would have been obvious because a person having ordinary skill in the art would have been motivated to do so, as suggested by, Swallow (See col 2 lines 14-17) in order to provide a mechanism for quickly repairing a failure in a communication link and has particular application to failed communications links in tunnels established for a realtime data transfer.

9. As per claims 2,15,28: the combination of Swallow and Jarosz teach the method/ system/a computer-readable storage device of further comprising configuring the first node and the fourth node to send and receive encrypted data between the first node and the fourth node (See Jarosz col 1 lines 32-45).

10. As per claims 3,16,29: the combination of Swallow and Jarosz teach the method/ system/a computer-readable storage device of further comprising configuring the first

node and the fourth node to send and receive the encrypted data between the first node and the fourth node via a first tunnel ( See Jarosz col 1 lines 32-45).

11. As per claims 4,17,30: the combination of Swallow and Jarosz teach the method/ system/a computer-readable storage device further comprising using a security protocol to encrypt the data (See Jarosz col 4 lines 32-52).

12. As per claim 5,18,31: the combination of Swallow and Jarosz teach the method / system/a computer-readable storage device of wherein the security protocol comprises at least one of Secured Socket Layer (SSL), Secure HTTP (SHTTP), Private Communications Technology (PCT), and IP Security (IPSEC)(See Jarosz col 4 lines 32-59).

13. As per claims 6,19,32: the combination of Swallow and Jarosz teach the method /system/a computer-readable storage device further comprising configuring the third node and the second node to send and receive encrypted data between the third node and the second node (See Jarosz col 1 lines 32-40, col 3 lines 52-58).

14. As per claims 7,20,33: the combination of the combination of Swallow and Jarosz teach the method/ system/a computer-readable storage device further comprising configuring the third node and the second node to send and receive the encrypted data between the third node and the second node via a second tunnel (See Jarosz col 5 lines 38-63).

15. As per claims 8,21,34: the combination of Swallow and Jarosz teach the method/ system/a computer-readable storage device further comprising using a security protocol to encrypt the data (See Jarosz col 4 lines 32-59).



16. As per claims 9,22,35: the combination of Swallow and Jarosz teach the method/system/a computer-readable storage device wherein the security protocol comprises at least one of Secured Socket Layer (SSL), Secure HTTP (SHTTP), Private Communications Technology (PCT), and IP Security (IPSEC)(See Jarosz col 4 lines 32-59).

17. As per claims 12,25,38: the combination of Swallow and Jarosz teach the method/system/a computer-readable storage device of wherein transmitting over the network the indication further comprising using Internet Key Exchange (IKE)(See Jarosz col 4 lines 32-59).

18. As per claims 13,26,39: the combination of Swallow and Jarosz teach the method/ system/a computer-readable storage device of wherein the network comprises the Internet (See Swallow col 3 lines 9-48 ).

### ***Conclusion***

19. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fikremariam Yalew whose telephone number is 5712723852. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Moazzami Nasser, can be reached on 5712738300. The fax phone number for the organization where this application or proceeding is assigned is 571-272-4195.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Fikremariam Yalew  
10/13/2008  
FA

/Nasser G Moazzami/  
Supervisory Patent Examiner, Art  
Unit 2436

